

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FILED  
BILLINGS DIV.

2007 DEC 14 PM 2 01

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**RALPH MARCHER,<sup>1</sup>**

**Plaintiff,**

**vs.**

**MICHAEL J. ASTRUE, Commissioner  
of Social Security Administration,**

**Defendant.**

**CV-07-54-BLG-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

On November 16, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends that the Commissioner's motion for summary judgment be denied, Marcher's motion for summary judgment be granted, and the Commissioner's decision be reversed and the case remanded for calculation of benefits.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the November 16, 2007 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

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<sup>1</sup>Sharon Marie Marcher died of heart failure on July 17, 2007. Her husband, Ralph Marcher, was substituted as the plaintiff in this action by Order of Magistrate Judge Carolyn Ostby dated August 23, 2007 [*doc. #17*].

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.


There is no evidence that the ALJ gave meaningful consideration to Dr. Thigpen's opinion that Marcher had fatigue due to sleep apnea. Dr. Thigpen, a treating physician, opined that Marcher's apnea was severe enough to cause fatigue and impact her ability to function during the day. Indeed, Marcher's polysomnogram indicated that her oxygen saturation dropped to 58%, as opposed to 90%, during sleep, due to apnea. Dr. Thigpen also stated Marcher was having difficulty using the CPAP device. There is no indication that the ALJ gave Dr. Thigpen due consideration.

Additionally, the ALJ did not provide legally sufficient justification for giving reduced weight to the opinions of Marcher's treating physicians, Drs. Michel and Thigpen. Had the ALJ properly credited Marcher's testimony and the opinions of her physicians, it is clear from the record that Marcher would have to be found disabled.

Accordingly, **IT IS HEREBY ORDERED** the Commissioner's motion for summary judgment [*doc. #13*] is **DENIED**, Marcher's motion for summary judgment [*doc. #11*] is **GRANTED**, and the Commissioner's decision is **REVERSED** and the case **REMANDED** for calculation of benefits.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 14<sup>th</sup> day of December, 2007.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE